IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

Writ Petition No.3698 of l994

Prakash Shankar Koli
adult, occ service wroking
as Traffic Inspector with Addl
Transport Manager Kolhapur Mun
Corporation Transport, Kolhapur...Petitioner

vs.

l. The State of Maharashtra
through its Secretary
Ministry of Tribal Development
Mantralaya,Bombay.32

2. The Chairman
Scheduled Tribe Caste
Certificate Scrutiny Committee
28 Queens Garden Pune

3. The Commissioner
Kolhapur Municipal Corporation
Transport having its office

at Shahu Cloth Market lst

Floor,C Ward,Kolhapur 2

4. Additional Transport Manager

Kolhapur Mun Corporation

Transport Subhash Road

Kolhapur

5. Kolhapur Municipal Corpn

Kolhapur. ... Respondents

Shri R.K.Mendadkar for petitioner

Shri C.R.Sonawane, A.G.P. for respondents.

CORAM: A.P.SHAH & D.Y.CHANDRACHUD JJ.

Dt lst July 2005

P.C.

. By this petition the petitioner seeks to challenge the order passed by the Caste Scrutiny Committee dated 20.6.l994 rejecting the claim of the petitioner that he belongs to Mahadeo Koli, Scheduled Tribe.

2 The petitioner joined the service of respondent no. 4 on a reserved vacancy as a conductor on 8.3.l984 and as of today he is working on the post of Traffic Inspector. It appears that the respondent no. 4 referred the petitioner's claim to the Scrutiny Committee for verification of his caste. The Scrutiny Committee vide order dated 20.6.l994 rejected the petitioner's caste claim and held that the petitioner does not belong to the schedule tribe of Mahadeo Koli. The Committee noted in its order that the caste of the petitioner was recorded as Hindu Koli which is socially, culturally different from Mahadeo Koli which is included as a scheduled tribe in the Presidential Notification.

3. Mr.Mendadkar, learned counsel appearing for the petitioner has not pressed the challenge to the report of the Scrutiny Committee. However, the learned counsel drew our attention to paragraph 4 at page 24 of the Government Resolution dated l5.6.l995 which reads as under:

> "4.The reservation granted to the above quoted "Special Backward Class" is applicable to the Direct Recruitments and also promotions. Similarly the principle of creamy layer shall not apply to this class. The persons belonging to this class already recruited on the basis of S.T.Certificate in Government, Semi Government services and obtained promotions should not be reverted or terminated".

4. It is apparent from paragraph 4 of the Government Resolution reservation granted to the abovequoted "Special Backward Class" is applicable to the District Recruitments and also promotions and the persons belonging to this class already recruited on the basis of Schedule Tribe Certificate in Government, Semi Government services and obtained promotions shall not be reverted or terminated. There is no dispute before us that the respondents are bound to follow the mandate of the said Government Resolution. The Government

Resolution fell for consideration of the Division Bench of this Court in Writ Petition No.l84l of l999 (decided by N J Pandya and J A Patil JJ on 30.ll.l999) and the Bench held as follows:

> "When the first part of the said Government Resolution is read in conjunction of the later part, in our opinion,m it is quite obvious that though in the later part, a candidate being recruited and obtained promotion can be read in conjunction but when paragraph is read in its entirety, it is quite obvious that this part is also to be read disjunctively and not conjunctively. In other words, paragraph does not protect only those cases where after recruitment and promotion having been obtained,they will not loose the job.
>
> As we read the Government Resolution, it is quite obvious that in respect of the Special Backward Class, a question, as carved out by this G R whether those persons are eligible

> to get protection when already they have got employment as said in the GR and later on a question would arise whether they are protected or not. The internal promotion, in our opinion, therefore, is not a requirement of being eligible for getting benefit of the said G.R".

5. A similar view is taken by the Division Bench in Writ Petition No.2l39 of l997 in the case of Shri Sunil Laxman Palase vs State of Maharashtra and ors (decided by V.P.Tipnis and Y.S.Jahagirdar JJ on 28.4.l997).

6. In our opinion after the Government Resolution dated l5.6.l995 has been brought into force, the services of the petitioner are liable to be protected as he falls in the category of Koli which is designated as a Special Backward Class vide Government Resolution dated l5.6.l995.

7. In the result, the petition is partly allowed and the order of the Scrutiny Committee is

maintained and it is declared that the petitioner does not belong to Mahadeo Koli Tribe but belong to Koli community. Consequently the petitioner will be entitled to the protection of Government Resolution dated l5.6.l995. Petition is accordingly disposed of.

8. The petitioner’s counsel makes a statement that the petitioner will not claim any benefits as belonging to Mahadeo Poli, Scheduled Tribe. An affidavit to that effect to be filed in the proceedings within two weeks from today .